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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**  
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12 CHRISTOPHER SPELLS,  
13  
14 vs. Petitioner,  
15 JEFFREY A. BEARD  
16 Respondent.

CASE NO. 12-CV-2208-H-JMA

**ORDER DENYING  
PETITION FOR WRIT OF  
HABEAS CORPUS**

[Doc. No. 1]

17  
18 On September 10, 2012, Petitioner filed a petition for writ of habeas corpus  
19 pursuant to 28 U.S.C. § 2254. (Doc. No. 1.) Petitioner claims that the trial court  
20 improperly denied his motion under Batson v. Kentucky, 476 U.S. 79 (1986) and  
21 People v. Wheeler, 22 Cal. 3d 258 (1978) and that the trial court abused its discretion  
22 by denying his motion to dismiss strike prior convictions in violation of the Fourteenth  
23 Amendment. (Doc. No. 1 at 25-32.) On May 22, 2013, Respondent filed an answer  
24 to the petition. (Doc. No. 14.) On July 3, 2014, the magistrate judge issued a report  
25 and recommendation to deny the petition. (Doc. No. 18.) On July 16, 2014, Petitioner  
26 filed a traverse. (Doc. No. 17.) The Court adopts the magistrate judge's report and  
27 recommendation and denies the petition for writ of habeas corpus.

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## Background

### **I. Procedural History**

On April 6, 2010, a jury convicted Christopher Spells (“Petitioner”) of unlawfully causing fire of an inhabited structure. (Lodg. No. 2, Rep’s Tr. vol. 4 at 15.) On June 9, 2010, the state trial court sentenced Petitioner to twenty-five years to life plus a one-year enhancement. (Lodg. No. 2, Rep’s Tr. vol. 5 at 10.) On December 1, 2010, Petitioner appealed to the California Court of Appeal. (Lodg. No. 4.) On August 3, 2011, the California Court of Appeal affirmed the judgment. (Lodg. No. 6.) On September 8, 2011, Petitioner filed a petition for review in the California Supreme Court. (Lodg. No. 7.) On October 14, 2011, the court denied the petition without comment. (Lodg. No. 8.)

On August 21, 2012, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, setting forth four claims. (Doc. No. 1.) On September 19, 2012, the Court notified Petitioner that he failed to allege exhaustion of state court remedies with respect to his third and fourth claims and gave him options to remedy the deficiencies. (Doc. No. 4.) On November 2, 2014, Petitioner filed a motion to formally abandon his unexhausted claims. (Doc. No. 6.)<sup>1</sup> Two claims remain on the petition: (1) the trial court infringed Petitioner’s federal constitutional rights by denying his motion under Batson v. Kentucky, 476 U.S. 79 (1986) and People v. Wheeler, 22 Cal. 3d 258 (1978) after the prosecutor used three out of four peremptory

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<sup>1</sup>In this motion, Petitioner also requested appointment of counsel. (Doc. No. 3.) In the Ninth Circuit, “state prisoners applying for habeas relief are not entitled to appointed counsel unless the circumstances of a particular case indicate that the appointed counsel is necessary to prevent due process violations.” Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). A due process violation may occur in the absence of counsel if the issues involved are too complex for the petitioner or if the petitioner has such limited education that he is incapable of presenting his claims. Hawkins v. Bennett, 423 F.2d 948, 950 (8th Cir. 1970). Here, there is no indication that appointment of counsel is required to prevent a due process violation, as the issues are not too complex and Petitioner is capable of presenting them. (See Lodg. No. 2, Rep’s Tr. vol. 5 at 10 (the California Court of Appeal found that Petitioner was literate and intelligent)). The Court adopts the magistrate judge’s recommendation and denies Petitioner’s request for appointment of counsel.

1 challenges to remove female prospective jurors, and (2) the trial court abused its  
 2 discretion by denying his motion to dismiss strike prior convictions in violation of the  
 3 Fourteenth Amendment. (Doc. No. 1 at 25-32.)

## 4 **II. Statement of Facts**

5 The Court takes the following facts from the California Court of Appeal's  
 6 opinion:

7 On September 26, 2009, Spells and his girlfriend (Brenda Howard)  
 8 got into an argument. Spells hit Howard and began throwing things at her,  
 9 including an ashtray, a trash can, and a coffee table. Howard fled the  
 10 apartment and called 911. Spells's cousin (Tyea Whitson) was passing by  
 11 when Howard fled. Whitson looked inside the apartment window and saw  
 a small fire burning on the bed. Whitson heard Spells yelling "I'm going  
 to kill you all," and heard him throwing things and the sound of glass  
 breaking. Whitson screamed "fire" and alerted others to leave the  
 complex.

12 Meanwhile, the police had arrived at the complex in response to  
 Howard's domestic violence call. Spells was breaking windows in the  
 13 apartment. The police ordered him out of the apartment, and, before he  
 came out, they noticed smoke coming from the apartment windows. Spells  
 eventually came out of the apartment and was arrested. The fire  
 14 department arrived and put out the fire.

15 Spells was charged with arson. The jury convicted him of the lesser  
 included offense of unlawfully causing a fire of an inhabited structure.  
 ([Cal.] Pen. Code, § 452, subd. (b).) Based on his prior strike convictions,  
 16 he was sentenced to 25 years to life, plus a one-year term for a prior  
 prison term enhancement.

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 18 (Lodg. No. 6 at 2.) See 28 U.S.C. § 2254(e)(1).

## 19 **Discussion**

### 20 **I. Standard of Review**

21 28 U.S.C. § 2254(a) provides for federal review of state habeas corpus claims  
 22 "only on the ground that [a person] is in custody in violation of the Constitution or laws  
 23 or treaties of the United States." 28 U.S.C. § 2254(a). Under 28 U.S.C. § 2254(d):

24 (d) An application for a writ of habeas corpus on behalf of a person in  
 custody pursuant to the judgment of a State court shall not be granted  
 25 with respect to any claim that was adjudicated on the merits in State  
 court proceedings unless the adjudication of the claim—

26 (1) resulted in a decision that was contrary to, or involved an  
 27 unreasonable application of, clearly established Federal law, as  
 determined by the Supreme Court of the United States; or  
 28

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d).

## **II. Analysis**

### **A. Trial Court's Denial of Batson/Wheeler Motion**

Petitioner claims the trial court infringed his federal constitutional rights to due process, equal protection, and trial by jury by denying his Batson/Wheeler motion after the prosecutor used three out of four peremptory challenges to remove female prospective jurors. (Doc. No. 1 at 2-13, 26-28.) During peremptory challenges, the prosecutor excused three female and one male prospective jurors. (Lodg. No. 6 at 4.) The first female prospective juror was a lawyer who had worked for the Immigration and Naturalization Service ("INS") for five years, and she informed the court that her duties entailed reviewing rap sheets and conviction paperwork related to removal proceedings. (Id. at 4-5.) The prosecutor excused her because she believed lawyers with backgrounds in criminal law did not make good jurors. (Id.) The prosecutor determined that the prospective juror's criminal work experience would be similar to the criminal topics discussed at trial. (Id.)

The second female prospective juror had worked as a fifth grade teacher for five years. (Id. at 5.) The prosecutor excused her because she believed the juror did not have the life experiences that would allow her to make the decisions required of her in the case. (Id.) The prosecutor determined that the juror did not have the ability to make such difficult judgment calls and had little experience with group decision-making. (Id.) The third female prospective juror was a homemaker who had previously worked for a phone company. (Id.) The prosecutor excused her because she believed the juror had little experience supervising others or making group decisions and difficult judgment calls. (Id.)

On habeas review, the Court looks through a state supreme court's summary opinion to the reasoned opinion of the state appellate court below as the basis for its

1 analysis. Ylst v. Nunnemaker, 501 U.S. 797, 801-06 (1991). The California Court of  
2 Appeal concluded that the record supported the trial court's finding of no purposeful  
3 discrimination. (Lodg. No. 6 at 9.) The court determined that the "prosecutor was not  
4 providing sham excuses for excusing the three females to cover up a discriminatory  
5 purpose." (Id. at 5.) The court explained that the excusal of the three female  
6 prospective jurors was consistent with the prosecutor's desire to have jurors who were  
7 experienced in making judgment calls and participating in group decisions. (Id. at 6.)

8 Under the Equal Protection Clause, a litigant may not exercise a peremptory  
9 challenge to remove a potential juror solely on the basis of the juror's race, ethnic  
10 origin, or gender. See, e.g., Batson, 476 U.S. at 85 (race); Hernandez v. New York, 500  
11 U.S. 352 (1991) (ethnic origin); J.E.B. Alabama ex rel. T.B., 511 U.S. 127 (1994)  
12 (gender). Courts employ a three-step process to determine whether the use of a  
13 peremptory challenge infringes Batson or its progeny. First, a defendant must make a  
14 prima facie showing that the challenge was based on an impermissible basis, such as  
15 race or gender. Second, if the defendant makes that showing, the prosecution must  
16 provide a permissible basis for striking the juror in question. Third, if the prosecutor  
17 offers such an explanation, the trial court must decide whether the defendant has  
18 proved that the prosecutor's motive for the strike was purposeful discrimination.  
19 Snyder v. Louisiana, 552 U.S. 472, 476-77 (2008); Green v. LeMarque, 532 F.3d 1028,  
20 1029-30 (9th Cir. 2008). Here, Petitioner alleges the challenges were made based on  
21 gender alone. (Doc. No. 1 at 25-28.) The prosecutor listed permissible gender-neutral  
22 reasons for excusing the three female prospective jurors. The state trial court  
23 determined that the prosecutor's reasons for striking the three prospective female jurors  
24 were legitimate. (Lodg. No. 3.) On appeal, the California Court of Appeal reviewed  
25 the trial court's ruling for substantial evidence. (Lodg. No. 6 at 4-5.) See People v.  
26 Lenix, 44 Cal. 4<sup>th</sup> 602, 613-14 (2008). The appellate court determined that the record  
27 supported the trial court's finding of no purposeful discrimination. (Id. at 9.) The  
28 Court concludes that it was not objectively unreasonable for the California Court of

1 Appeal to affirm the trial court's acceptance of the prosecutor's gender-neutral  
2 explanation for striking the three female prospective jurors.

3 Petitioner further alleges that the prosecutor failed to engage in any meaningful  
4 voir dire of the three stricken jurors. (Doc. No. 1 at 25.) The state trial court  
5 concluded, and the appellate court affirmed, that the prosecutor's failure to further  
6 question the three stricken jurors does not demonstrate that her reason for excusing  
7 them was based on gender. (Lodg. No. 6 at 8-9.) The state courts determined that the  
8 prosecutor had the benefit of the answers provided during the court's and defense  
9 counsel's voir dire, which preceded hers. (*Id.*) As a result, the prosecutor's failure to  
10 question the three prospective jurors does not compel a finding of a gender-based  
11 motive for excusing them.

### 12 **B. Motion to Dismiss Strike Prior Convictions**

13 Petitioner claims the trial court abused its discretion by denying his motion to  
14 dismiss strike prior convictions, brought pursuant to People v. Superior Court  
15 (Romero), 13 Cal. 4th 497 (1996). (Doc. No. 1 at 29-32.) On habeas review, the Court  
16 looks through a state supreme court's summary opinion to the reasoned analysis of the  
17 state appellate court below as the basis for its analysis. Ylst, 501 U.S. at 801-06. Here,  
18 the state trial court determined, and the California Court of Appeal confirmed that  
19 Petitioner had incurred "four strike prior convictions, consisting of a robbery  
20 conviction in 1986; two convictions of aggravated assault with personal use of a deadly  
21 weapon in March 1990; and aggravated assault on an officer with personal infliction  
22 of great bodily injury in October 1990." (Lodg. No. 6 at 9.) The state court determined  
23 that Petitioner's criminal history was not outside the three strikes law and refused to  
24 dismiss his strike prior convictions. (*Id.*)

25 A trial court may dismiss a prior strike conviction if, in light of the nature and  
26 circumstances of the current and prior felony convictions and the particulars of the  
27 defendant's background, character, and prospects, the defendant is deemed outside the  
28 spirit of the three strikes law in whole or in part. People v. Carmony, 33 Cal. 4th 367,

1 377 (2004); see also Ewing v. California, 538 U.S. 11, 25-26 (2003); People v. Strong,  
2 87 Cal. App. 4th 328, 337 (2001). Here, the state trial court determined that Petitioner  
3 was not outside the spirit of the three strikes law. (Lodg. No. 6 at 13.) The court  
4 concluded that Petitioner's continuous criminal career and history of convictions  
5 placed him "well within what the voters intended when they adopted Three Strikes."  
6 (Id. at 12.) The California Court of Appeal reviewed the trial court's decision and  
7 agreed that Petitioner did not fall outside the three strikes law. (Lodg. No. 6 at 13.) See  
8 Carmony, 33 Cal. 4th at 376. Additionally, it concluded that the trial court properly  
9 considered all relevant factors before coming to this decision. (Id. at 14.)

10 Under California state law, a trial court has discretion to dismiss a prior strike  
11 allegation in the furtherance of justice. See Cal. Penal Code §1385(a); Romero, 13 Cal.  
12 4th at 529-30. Generally, matters relating to a state court's interpretation of state law  
13 do not implicate federal constitutional issues. See Wainwright v. Goode, 464 U.S. 78,  
14 84 (1983); Estelle v. McGuire, 502 U.S. 62, 67-68 (1991). Moreover, "[a] federal court  
15 may not issue the writ [of habeas corpus] on the basis of a perceived error of state law."  
16 Pulley v. Harris, 465 U.S. 37, 41 (1984). Petitioner's claim concerns the interpretation  
17 and application of California law, a matter which does not implicate federal  
18 constitutional concerns. The Court defers to and is bound by a state court's  
19 interpretation of its own laws. Petitioner has provided no authority to indicate that this  
20 case falls outside that general rule. Petitioner thus fails to present a cognizable federal  
21 claim. See 28 U.S.C. § 2254(a); Estelle, 502 U.S. at 68. Accordingly, the Court must  
22 dismiss the claim.

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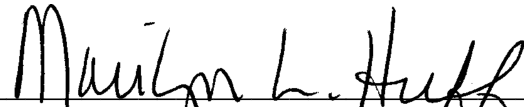


**Conclusion**

For the foregoing reasons, the Court adopts the magistrate judge's report and recommendation and denies the petition for habeas corpus. Additionally, the Court declines to issue a certificate of appealability as Petitioner has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED.**

DATED: July 28, 2014

  
MARILYN L. HUFF, District Judge  
UNITED STATES DISTRICT COURT